

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PACIFIC AEROSPACE &
ELECTRONICS, INC., a
Washington corporation,

Plaintiff,

v.

SRI HERMETICS, INC.,

Defendant.

NO. CV-05-0155-AAM

**ORDER DENYING
MOTION FOR
RECONSIDERATION**

BEFORE THE COURT is the plaintiff's Motion For Reconsideration (Ct. Rec. 27). This motion is heard without oral argument.

I. BACKGROUND

This is a patent infringement action brought by plaintiff Pacific Aerospace & Electronics, Inc. ("PA & E") against defendant SRI Hermetics, Inc. ("SRIH"). The complaint, filed May 25, 2005¹, alleged this court had personal jurisdiction over the defendant "because SRI Hermetics had an office in this district and conducted business here, including the design of products sold and/or offered for sale that are covered by patents owned by PA & E." This office was located in East Wenatchee, Washington from December 2003 to June 2004 and employed there by defendant during that time were Ed Taylor and Jim Petri. Taylor and Petri worked

¹ The court's November 4, 2005 "Order Granting Motion To Dismiss" inadvertently stated the complaint was filed "March 25, 2005."

1 for PA & E before they started working for SRIH. In June 2004, defendant closed
2 the East Wenatchee office and moved all of its equipment to its Melbourne, Florida
3 headquarters. Taylor and Petri also moved to Florida.²

4 In April 2005, PA & E learned about SRIH's response to a Request for
5 Quotation (RFQ) from Northrup Grumman. (Ex. F to Das Declaration). After
6 SRIH refused to provide PA & E with a copy of the response (Ex. G to Das
7 Declaration), PA & E filed its patent infringement action on May 25, 2005,
8 alleging SRIH had offered to sell to Northrup Grumman products that were
9 covered by one or more of plaintiff's patents.

10 On November 4, 2005, this court entered an order granting defendant's
11 motion to dismiss plaintiff's complaint for lack of personal jurisdiction. (Ct. Rec.
12 26). This court concluded that neither general or specific personal jurisdiction
13 existed.

14 With regard to general jurisdiction, the court stated in the order at p. 9:

15 It appears to the court that the only conceivable support for
16 general jurisdiction would be the claim that the work on the
17 RFQ for Northrup Grumman Corp. must have been conducted,
18 or completed while the two former employees (Taylor and Petri)
19 were located in Wenatchee, based on their representations to
the court in the earlier litigation, and because the two former
employees had access to information that would allow them to
create an infringing product. This argument, however, is not
supported by the evidence.

20 With regard to specific jurisdiction, this court stated at pp. 14-15:

21 There is no evidence that the Defendant's response to
22 Northrup Grumman Corporations's request for quotation,
23 which is the alleged infringing conduct, was generated from
the Washington office. Also, there is no evidence that
Defendant has sold any products, let alone infringing

24
25 ² There is no dispute that in March 2004, Taylor and Petri were still in East
26 Wenatchee. This was known by everyone, including the court, when the order of
dismissal was entered.

1 products, to anyone in Washington. There is no evidence
2 that the projects that Taylor and Petri worked on in
3 Wenatchee ever resulted in a salable product, other than
4 Defendant's representations at the prior proceeding that
5 there was information regarding products whose patents
6 were pending, or at least were almost pending.
7 Plaintiff has not met its burden of showing that the alleged
infringing sales or offers to sell arose out of or relate to
8 Defendant's activities in Washington. Hence, it cannot be
9 said that Plaintiff's cause of action arose out of the transaction
10 of any business within the State of Washington, the commission
11 of a tortious act within this state, and/or the ownership, use, or
12 possession of any property situated in this state.

13 On November 7, 2005, just a few days after this court's order of dismissal,
14 SRIH filed a lawsuit against PA & E in the Middle District of Florida seeking a
15 declaration that it has not infringed any of PA & E's patents.

16 On November 17, 2005, plaintiff filed this motion for reconsideration,
17 noting it for hearing without oral argument on December 19.

18 On December 2, plaintiff filed a Notice of Appeal with the Federal Circuit
19 Court of Appeals, appealing this court's order of dismissal.

20 II. DISCUSSION

21 It appears this motion for reconsideration is brought pursuant to Fed. R. Civ.
22 P. 59(e). There are four basic grounds upon which such a motion can be granted.
23 One of those grounds is "newly discovered" evidence. The motion may be granted
24 so that the moving party may present newly discovered or previously unavailable
25 evidence. A Rule 59(e) motion may not be used to present evidence that could
26 have been presented prior to the entry of judgment. Wright, Miller & Kane,
27 *Federal Practice and Procedure*, Civil 2d §2810.1 at pp. 125-28 (2nd Ed. 1995).

28 Plaintiff seeks reconsideration on the basis of a September 2, 2005 letter it
received from defendant SRIH. (Ex. A to Bodine Declaration). This letter
informed plaintiff that SRIH had received a patent for its own technology (the '644

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1 patent) and asked plaintiff to review it to “confirm . . . there is no claim of
2 infringement.” Attached to the letter was a copy of the patent listing the inventor
3 as “Edward Allen Taylor, E. Wenatchee, WA (US)” and the “Assignees” as “SRI
4 Hermetics, Inc., Melbourne, FL (US); Edward Taylor, W. Melbourne, FL (US).”
5 The patent is dated August 23, 2005. It appears that subsequent to September 2,
6 2005, plaintiff’s counsel obtained from the U.S. Patent and Trademark Office a
7 copy of the prosecution history for SRIH’s ‘644 patent. (Ex. B to Bodine
8 Declaration). That history revealed the patent application had been filed March 31,
9 2004. Included in the prosecution history is a “Declaration And Power Of
10 Attorney For Patent Application” executed by Taylor as the “Inventor” and
11 identifying his residence as “2006 E. Crystal Court, E. Wenatchee, WA 98802.”
12 (*Id.* at p. 86). Taylor executed this document on March 31, 2004, in conjunction
13 with the patent application. A filing receipt listed “Edward Allen Taylor, E.
14 Wenatchee, WA” as the applicant. (*Id.* at p. 47). Also included in the prosecution
15 history is a “Notice Of Allowance And Fees Due” containing a notation that it was
16 mailed to SRI’s Florida counsel on March 16, 2005. This notice advised that a
17 patent would be issued. (*Id.* at 16).

18 Plaintiff contends this evidence indicates that SRIH’s technology, at issue in
19 this case, was “developed and reduced to practice by Taylor in SRIH’s East
20 Wenatchee office.” In turn, says plaintiff, this establishes that the alleged
21 infringing activities of SRIH are related to its activities in Washington and
22 consequently, the court should reconsider and find that it has personal jurisdiction
23 over SRIH. Plaintiff asserts this qualifies as “newly discovered” evidence because
24 it did not receive the September 2, 2005 letter until after it had already filed its
25 response to SRIH’s motion to dismiss on August 24, 2005.

26 SRIH contends the September 2, 2005 letter does not qualify as “newly

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1 discovered” evidence because plaintiff was in possession of it two months before
2 this court issued the order dismissing the complaint on November 4, 2005.
3 Plaintiff’s response is that the evidence is “newly discovered” because at least the
4 March 16, 2005 “Notice of Allowance And Fees Due” existed at the time SRIH
5 filed its motion to dismiss (on July 5, 2005), and because SRIH did not disclose the
6 evidence to plaintiff until “all allowed briefing on SRIH’s motion was completed.”
7 Plaintiff asserts that “[b]ecause this court’s local rules do not provide a mechanism
8 for parties to submit evidence after the reply memorandum is submitted, and
9 because SRIH did not disclose the ‘644 patent or its importance to the dispute until
10 after it . . . filed its reply [on August 30, 2005], the only avenue open to PAE for
11 bringing this evidence before the Court was through a motion for reconsideration.”

12 Clearly, the information about the ‘644 patent was not “unavailable” to the
13 plaintiff at the time this court entered the order of dismissal. The plaintiff knew of
14 the patent for two months prior to the dismissal. Nevertheless, plaintiff argues
15 there was no mechanism for it to present the evidence to the court prior to the entry
16 of the order of dismissal. Although it is true the court’s local rules speak only in
17 terms of an opening memorandum, a response memorandum, and a reply
18 memorandum (LR 7.1), that did not preclude the plaintiff from filing a motion for
19 leave to file a sur-reply and/or a motion to supplement the record so that prior to
20 the issuance of the order of dismissal, the court could have potentially considered
21 the ‘644 patent and its impact upon the jurisdictional analysis. Other courts have
22 reached that very conclusion in denying motions for reconsideration seeking to
23 introduce “newly discovered” evidence. *See Waltman v. International Paper Co.*,
24 875 F.2d 468, 473-74 (5th Cir. 1989) and *Paul Prieto v. Storer Communications,*
25 *Inc.*, 152 F.R.D. 654, 655 (M.D. Fla. 1994). These kind of motions are filed with
26 some regularity and were a realistic option in this case considering plaintiff

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1 received the September 2, 2005 letter just a few days after briefing had been
2 completed and it was reasonable to expect there would be some delay before a
3 ruling would be received from the court. Indeed, it was two months before there
4 was a ruling.

5 The information about the '644 patent is not "newly discovered" or
6 "previously unavailable" evidence. It could have been presented prior to the entry
7 of the order of dismissal. Plaintiff's failure to make a much earlier attempt to bring
8 this evidence to the court's attention has resulted in not only the issuance of the
9 order of dismissal, but plaintiff's filing of an appeal in this case, and SRIH's filing
10 of a separate and new action in the Middle District of Florida seeking a declaration
11 of non-infringement. This is time, money and energy expended which could have
12 potentially been averted. Judicial efficiency warrants denial of the motion for
13 reconsideration.

14 15 **III. CONCLUSION**

16 Plaintiff's Motion For Reconsideration (Ct. Rec. 27) is **DENIED**. Plaintiff
17 will have to litigate this matter in the Middle District of Florida if it does not
18 succeed on its appeal to the Federal Circuit.

19 **IT IS SO ORDERED.** The District Executive is directed to enter this order,
20 forward copies to counsel, and close this file.

21 **DATED** this 9th of January, 2006.

22
23 s/ Alan A. McDonald
24 ALAN A. McDONALD
25 Senior United States District Judge
26

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